

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-2041

IN
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-2041

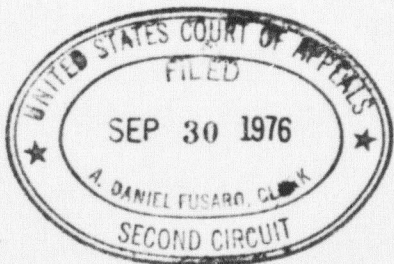
LOUIS COFONE, Appellant

v.

JOHN MANSON,
CARL ROBINSON, Appellees

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANT'S APPENDIX



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EXHIBIT #1

DISTRICT OF CONNECTICUT

LOUIS F. COFONE

:

v.

:

CIVIL NO. H-74-367

JOHN R. MANSON, Commissioner,
Department of Correction,
ET AL.

:

:

MEMORANDUM OF DECISION

This civil rights action, brought by an inmate at the Connecticut Correctional Institution at Somers, Connecticut, challenges the procedures adopted by the Department of Correction for screening incoming mail.

The action is brought pursuant to 42 U.S.C. § 1983 (1970), and jurisdiction exists pursuant to 28 U.S.C. § 1343(3) (1970). The defendants, sued in both their individual and official capacities, are John Manson, the Commissioner of Correction for the State of Connecticut; Carl Robinson, the Warden at Somers; and James Singer, an Assistant Warden, also at Somers.

The plaintiff challenges four different practices of the Department of Correction. His first and broadest attack is a constitutional challenge to the procedure for screening incoming literature, including the present procedure for appealing from decisions which refuse entrance to certain publications.^{1/} His second challenge concerns the right of

^{1/} This issue was before this court once before, but in a more limited scope. In Paka v. Manson, 387 F. Supp. 111 (D. Conn.

the prison to open privileged communications between attorneys and their inmate clients.^{2/} Third, he attacks the constitutionality of regulations which authorize the warden to single out an individual prisoner for a complete "screen" of all his incoming mail. Finally, he alleges that on several occasions his mail was delayed or opened out of his presence, in violation of the prison's own regulations which require that privileged mail be opened in the presence of the inmate.

Although the plaintiff originally sought injunctive as well as declaratory relief, his complaint was subsequently amended to remove all claims for injunctive relief and thereby avoid the necessity of convoking a three-judge court. See Steffel v. Thompson, 415 U.S. 452, 457 n.7 (1974).

I. Exhaustion

The defendants' first claim is that this complaint should be dismissed because the plaintiff has failed to exhaust his administrative remedies.

1/ cont'd

1974), I ruled that although prison officials could prohibit the formation of a prisoners' union, they could not bar a publication entitled The Outlaw simply because it promoted the cause of unionism. Paka did not, however, involve a broad constitutional attack on the Department's mail regulations.

2/

This issue has previously been considered by this court as well in Jones v. Manson, Civil No. 15,441 (D. Conn. April 13, 1973). The plaintiff in this action was likewise the plaintiff in a companion case included in that opinion, Cofone v. Manson, Civil No. 15,613 (D. Conn. April 13, 1973). The defendants have not, however, attempted to raise an estoppel argument.

In Steffel v. Thompson, 415 U.S. 452, 472-73 (1974)

the Supreme Court stated:

"When federal claims are premised on 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3)-- as they are here--we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights."

This statement was repeated in Ellis v. Dyson, 421 U.S. 426, 432-33 (1975).

The Court of Appeals for this circuit, although conceding on the issue of judicial exhaustion, has interpreted the statements regarding administrative remedies in both Steffel and Ellis as dicta, and has refused to alter the exhaustion requirement in the absence of a more direct statement by the Supreme Court.^{3/} Fuentes v. Roher, 519 F.2d 379, 386 (2d Cir. 1975); Plano v. Baker, 504 F.2d 595, 597 (2d Cir. 1974).

The court's most recent discussion of this issue, occurring in the context of a similar literature case, Morgan v. LaVallee, 526 F.2d 221 (2d Cir. 1975), disputes the proposition that the Steffel statement was dictum. However, this discussion is itself dictum, since, rather than abandoning the exhaustion requirement, the panel found that on the

^{3/}

That statement is expected in McCray v. Burrell, 516 F.2d 357 (4th Cir. 1975), cert. granted, 44 U.S.L.W. 3257 (U.S. Nov. 4, 1975) (No. 75-44).

facts before it the prisoner's administrative remedies have been exhausted. The holding of that case, however, serves as the basis of decision for the exhaustion argument here. There the court held that:

"Before the court below may relinquish its § 1983 jurisdiction it must, on the most narrow reading of the cases, be positively assured--it may not presume--that there are speedy, sufficient and readily available administrative remedies remaining open to pursue, an assurance certainly not attainable on this record."

526 F.2d at 224.

A description of Mr. Cofone's attempts to seek relief within the prison system leaves no room for arguing that such an administrative remedy was either speedy or readily available. After learning that the publications in question had been rejected, Mr. Cofone attempted to appeal to the Central Office Library Committee on several occasions. In one attempt, he wrote directly to the Committee in Hartford. After a delay of almost a month, he received a letter from the Commissioner telling him that he should have written in care of the Commissioner or his assistant and suggesting that he begin again at the institution level.^{4/}

^{4/}

Letter from John R. Manson, Commissioner of Correction, to Louis Cofone, Sept. 11, 1974, Defendants' Exhibit 5. The defendants' reliance on Carrona v. Manson, Civil No. H-75-2 (D. Conn. June 16, 1975) is misplaced. In that case the plaintiff, upon receiving notice of the rejection of his publication, immediately filed suit in federal court. In the present case, Mr. Cofone made an extensive effort to exhaust the administrative remedies available to him.

4

the final position of the defendant has been that the plaintiff has the duty to provide the Library Committee with a selection of three or four recent issues before a specific publication can be approved.^{5/} Since I hold that requirement is in itself an unconstitutional burden, and since the facts as presented at the hearing in this matter demonstrate that the Department of Correction has not presented the plaintiff with a "speedy, sufficient and readily available administrative remedy," I find that the plaintiff's efforts to appeal the exclusions have relieved him of any further duty to exhaust the remedies available within the correctional system, if, in fact, such a duty does exist.^{6/}

5/

The specific request to the plaintiff was for five or six issues. Memorandum from John R. Manson to All Wardens, September 16, 1974, Exhibit A to Defendants' Answer. In the most recent regulations however, the number has been reduced to three or four. Department of Correction, Administrative Directive, Review of Reading Materials, ch. 3.7, § 2(b)(5) (July 1, 1975).

6/

The defendants also pointed out at the hearing, and again in their brief, that many of the periodicals which Cofone desires to receive have been admitted since he last attempted to avail himself of his administrative remedies. Furthermore, they argue that he has had no literature rejected upon administrative review since the new directive was issued in July 1975. Therefore they conclude that Cofone should once again raise his arguments at the prison level.

While it is far from clear which publications are currently being admitted to the prison, the defendants admit that not all the publications which the plaintiff has requested are being admitted into the institution. Since the plaintiff's challenge focuses on the constitutionality of the review procedure, rather than its application to any particular publication, there exists a sufficient present controversy for the purposes of the Declaratory Judgment Act and article III. Ellis v. Dyson, 421 U.S. 426, 434-35 (1975). Cf. United Auto Brokers v. Pac, Civil No. H-75-195 (D. Conn. 1975).

II. Censorship of Incoming Publications

All publications mailed to inmates in the Connecticut correctional system are, upon their arrival at the prison, screened by the librarian.^{7/} If he finds there to be a serious possibility that the publication might meet one of the "Criteria for Rejection"^{8/} promulgated by the Commissioner, he refers the offending publication to a body euphemistically called the prison "Library Committee."^{9/} If the committee decides to reject the publication, the inmate-addressee is

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Department of Correction, Administrative Directive, Review of Reading Materials, ch. 3.7, § 2(a)(4).

8/

Id., § 4. This section reads:

"CRITERIA FOR REJECTION OF PUBLICATIONS.

a. Publications may be rejected if they:

- (1) concern plans and techniques of escape;
- (2) give instructions for the making of drugs or poisons;
- (3) advocate disruption within institutions or in the community;
- (4) have demonstrably cause disruption within institutions or in the community;
- (5) advocate racial, religious or nationality hatred;
- (6) provide information regarding criminal skills (lock-picking, safe-cracking, etc.);
- (7) give instructions for the construction of weapons, explosives, or incendiary devices;
- (8) give instructions in combative skills;
- (9) obstruct rehabilitative objectives; or
- (10) would be unacceptable under U.S. Postal Regulations."

9/

Id., § 2(b)(2).

notified of the decision, the reason, and his avenue of appeal.^{10/} If the inmate chooses to appeal the decision he can obtain another review by supplying the committee with three to four issues of the periodical.^{11/} If the Library Committee again decides against him, he can appeal that decision to the Central Office Library Review Committee, with overall responsibility for the Connecticut prison system, whose decision is final.^{12/} Once a publication has been approved, a higher burden is placed on the individual institutions if they desire to reject a specific issue.^{13/}

An assessment of the validity of the plaintiff's challenges to both the rejection criteria and the appeals process must begin with Procunier v. Martinez, 416 U.S. 396 (1974). In that decision the Supreme Court, after examining a series of earlier lower court decisions held that

" . . . censorship of prisoner mail is justified if the following criteria are met. First, the regulation or practice in question must further an important or substantial governmental interest unrelated to the suppression of expression. Prison officials may not censor inmate correspondence simply to eliminate unflattering or unwelcome opinions or factually inaccurate statements. Rather, they must show that a

^{10/}
Id., § 2(b)(3-4).

^{11/}
Id., § 2(b)(5).

^{12/}
Id., § 2(c).

^{13/}
Id., § 3.

regulation authorizing mail censorship furthers one or more of the substantial governmental interests of security, order, and rehabilitation. Second, the limitation of First Amendment freedoms must be no greater than is necessary or essential to the protection of the particular governmental interest involved. Thus a restriction on inmate correspondence that furthers an important or substantial interest of penal administration will nevertheless be invalid if its sweep is unnecessarily broad."

416 U.S. at 413-14.

But Procunier does not explicitly govern the decision of this suit for two reasons. First, Procunier was based on the first amendment rights of the prisoners' correspondents; the question of the prisoners' rights was specifically reserved. 416 U.S. 408. Second, Procunier dealt with individual letters addressed to prisoners; the question of mass mailings was also explicitly left open. 416 U.S. 408 n.11.

The existence of prisoners' first amendment rights, which has been recognized earlier in this circuit, Goodwin v. Oswald, 462 F.2d 1237 (2d Cir. 1972); Fortune Society v. McGinnis, 319 F. Supp. 901 (S.D.N.Y. 1970); was confirmed by the Supreme Court in Pell v. Procunier, 417 U.S. 817, 822 (1974).

This leaves for examination the "different considerations [which] come into play in the case of mass mailings." The first consideration is that in this case, as in Procunier the regulations in question affect more than just the inmates.

by censoring incoming publications the state has also placed a burden on freedom of the press. Grosjean v. American Press Co., 297 U.S. 233, 248-50 (1936). Cf. Pell v. Procunier 417 U.S. at 829-35. Furthermore, the nature of the material being censored, impersonal publications of general circulation, open to inspection and even subscription by the prison administration, necessarily poses much less of a security risk to the institution than does regular mail, in closed envelopes, intended to communicate a particular, personal message from the sender to the addressee.^{14/} For these

14/

Evidence of the lesser threat posed by publications is the difference in censorship regulations enforced by the United States Bureau of Prisons. Compare the regulation governing personal correspondence, Policy Statement 7300.1A, set out in Procunier v. Martinez, 416 U.S. at 414-15 n.14, with the regulations governing incoming publications, Policy Statement 7300.42B(4).

- "a. Publications, including books, must come directly from the publisher. Executive officers of the following institutions may authorize exceptions to this rule: Morgantown, Englewood, Pleasanton, Ashland, Seagoville, Allenwood, Eglin, Montgomery, Safford and the Lompoc Camp.
- b. Unless a publication will be detrimental to the security, good order and discipline of the institution, it will not be barred from admittance to the institution.
- c. Prior approval will not be necessary for an inmate to subscribe to a publication. However, if upon examination of three issues, not necessarily successive, it is determined that a publication is unacceptable, it may be prohibited from the institution on the basis of paragraph 4b above. It is expected, however, that a further review of such publication should

order to censor incoming publications, prison administrators must at least comply with the standards set out in Procunier v. Martinez. Hopkins v. Collins, Civil No. K-74-369 (D. Md. Dec. 11, 1975); Aikens v. Lash, 390 F. Supp. 663, 667 (N.D. Ind. 1975); Gray v. Creamer, 376 F. Supp. 675, 678 (W.D. Pa. 1974); McCleary v. Kelly, 376 F. Supp. 1186, 1192 (M.D. Pa.

14/ cont'd

be initiated six months subsequent to the date the publication was originally or previously barred.

- d. Caution will be exercised before declaring a publication unacceptable because of its religious, philosophical, social or sexual views. As indicated in 4b, above, the decision not to forward a publication to an inmate under this Policy Statement must be based on a showing that doing so will clearly compromise the security, discipline and good order of the institution.
- e. Where a publication is unacceptable under this Policy Statement, the head of the institution shall make a complete record of the reasons for finding the publication unacceptable. The head of the institution will notify the publisher by letter (1) that a particular publication is unacceptable and will not be delivered to the inmate addressee, (2) the reason the publication is being rejected, and (3) that he may obtain an independent review of the rejection by writing to the Regional Director within fifteen (15) days of the letter. The inmate addressee will be advised of the rejection by a copy of the letter to the publisher.
- f. A reasonable limit shall be placed on the number of publications an individual may retain in quarters."

As the Supreme Court noted in Procunier, supra, the nature of this policy, although not controlling, is relevant to a determination of the need for the restrictions employed by the State of Connecticut

1974). See also Paka v. Manson, 507 F. Supp. 111 (D. Conn. 1974).^{15/}

A. The Rejection Criteria

Having established that the Procunier standards apply, it remains only to test the Connecticut regulations against the double requirement of serving a justifiable government interest and being no broader than necessary to accomplish that purpose, even after a consideration of the leeway the officials must have in overseeing the institutions.

The plaintiff challenges four of the criteria set out in note 8 supra, which allow the prison to reject publications which:

- "(3) advocate disruption within institutions or in the community;
- (4) have demonstrably caused disruption within institutions or in the community;
- (5) advocate racial, religious or nationality hatred; [or]
- (9) obstruct rehabilitative objectives."

→ { Criteria 3 and 4 are impermissibly overbroad and therefore violate the second Procunier standard. Each of these regulations is deficient in three ways. First, the word "disruption" is overbroad in that it could encompass behavior which, although posing no actual threat to the security or order of the institution, displeases the prison

15/

This same holding was necessarily implied in Paka. See note 1 supra.

administration.^{16/} Second, the regulations are not narrowly tailored to ban only those publications which pose a real threat to the security and order of the institution. While the "clear and present danger" test may not be applicable to threats within the institution,^{17/} it is clear that an acceptable regulation must be "narrowly drawn to reach only material that might be thought to encourage violence. . . ." Procunier v. Martinez, 416 U.S. at 416.

Finally, while the prison has a legitimate concern with publications which advocate criminal activity in the community as well as in the institution, Procunier, 416 U.S.

16/

See Paka v. Manson, and note 1 supra.

In their brief, the defendants argue that because the plaintiff has been convicted of inciting injury to persons or property, and because he has previously been disciplined in the prison for conspiracy to create a disturbance, he should understand the meaning of the word "disruption." This argument, in addition to being illogical, misses the difference between a due process vagueness challenge, which attacks the amount of notice given by a regulation, and a first amendment overbreadth challenge, which attacks the fact that the regulation encompasses protected as well as unprotected expression and permits the authorities an impermissible range of discretion.

17/

But cf. the new regulations accepted by the District Court and set out by the Supreme Court in Procunier, 416 U.S. at 416-18 n.15, which banned all letters which "contain[ed] information which if communicated would create a clear and present danger of violence and physical harm to a human being. And under the Federal Bureau of Prisons Policy Statement, set out in note 14 supra:

"the decision not to forward a publication to an inmate under this Policy Statement must be based on a showing that doing so will clearly compromise the security, discipline and good order of the institution."

at 413, I hold that in order to be within the reach of a constitutional ban concerning proposed activity outside the institution, the publication must present a clear and present danger of the occurrence of the criminal activity.

Brandenburg v. Ohio, 395 U.S. 444 (1969).^{18/}

For similar reasons criterion 5 is also an impermissible restraint. If anything, this regulation is more restrictive than the similar regulation struck down in Procunier, 416 U.S. at 416. Like that regulation, criterion 5 is not "narrowly drawn to reach only material that might be thought to encourage violence. . . ."

The last of the challenged criteria, number 9, is the most objectionable of all. This regulation, as did the regulations in Procunier, "fairly invite[s] prison officials and employees to apply their own personal prejudices and opinions as standards for prison mail censorship."^{19/} 416 U.S. at 415. While this court admits that it is the prison administrators who are the experts in rehabilitation, that expertise should enable them to draft narrow regulations barring publications which adversely affect a prisoner's rehabilitation. The first amendment will not allow a

^{18/}

Assuming that a publication did present such a danger it would already be banned from Connecticut institutions under criterion 10, since it "would be unacceptable under U.S. Postal Regulations."

^{19/}

And according to the testimony of Craig Warren, the former librarian at Somers, this was the frequent result.

catchall regulation which permits the exercise of unbridled discretion.^{20/}

B. The Appeals Process

The appeals procedure set out earlier in this opinion manifests a fundamental misunderstanding on the part of prison officials of the effect of the first amendment on their power to regulate and censor incoming publications. The burden can never be on the prisoner or publisher to obtain approval of a publication before it will be allowed into the prisons. Under the first amendment, every issue of every publication received at the prison is presumptively entitled to admission. Cf. Near v. Minnesota, 283 U.S. 697 (1931). It is only when the individual publication actually poses a tangible threat, of more than negligible imminence, to the

20/

In the course of the hearing, a large number of allegedly prohibited publications were submitted as exhibits by the plaintiff. While this court has not been asked to pass explicitly on the acceptability of each issue, and while this would be especially difficult due to the confusion on the record as to which publications actually are at this time prohibited, it suffices to say that upon a casual perusal of each of these exhibits, this court found no issue which, in its opinion, actually threatened the order or security of the institution with sufficient imminence to justify its rejection under properly drawn regulations. Since this court does not desire nor intend to become the next appellate level in the prison "Library Committee" system, it is important that those officials responsible for censorship at the prison understand the burden which the Constitution places upon them. It is only because of the unique situation which exists in a prison that they are empowered to reject publications at all. When the decision to reject a publication is made, it must be made on their professional judgment of the serious threat posed by the publication and not on their personal judgment concerning the merits of its contents.

order and security of the prison that it may be rejected. The burden is always on the prison administration to justify the rejection of each item and the burden is a substantial one. Cf. Fortune Society v. McGinnis, 319 F. Supp. 901 (S.D.N.Y. 1970).

For this reason the appeals process set out in Administrative Directive, ch. 3.7 (July 1, 1975) is defective in two respects. First, it is defective because although it requires that notice of rejection and specific reasons be given to the addressee,^{21/} it does not require that similar notice be given to the publisher. While the publisher may have an independent right to contest the rejection of his publications, see Pell v. Procunier, 417 U.S. at 824-35, I

^{21/}

The plaintiff also alleges that the reasons given for rejection of publications do not satisfy due process requirements. He has submitted three examples of notices he has received. In two of the notices no reason was given for the rejection. One of these, however, predated the new regulations which require reasons to be given. Administrative Directive, ch. 3.7, § 2(b)(3). It is not enough that the rejection notice recite the applicable criterion. Cf. Administrative Directive, ch. 3.7, § 2(b)(2). It must give a brief explanation of the reason that the publication has been rejected. This should include a reference to the article or articles found objectionable if less than the whole publication is faulted. A satisfactory reason serves two beneficial purposes, both focusing the arguments of those who wish to contest the rejection, and alerting the appeals board to the explicit reasons for the rejection at the institution. Cf. Haymes v. Regan, 525 F.2d 540 (2d Cir. 1975); United States ex rel. Johnson v. Chairman, N.Y. St. Bd. of Parole, 500 F.2d 925 (2d Cir.), vacated sub nom. Regan v. Johnson, 419 U.S. 1015 (1974).

hold that the prisoner, himself, has the right to the publisher's aid in submitting written objections to the Library Committees. Since the prisoner will not have even seen the offending issue, he cannot be expected to marshal arguments in favor of its admission without the assistance of someone familiar with the material. Without the assistance of the publisher the prisoner's right to contest the rejection would be hollow indeed.

The procedure is also defective because it requires the prisoner to assemble several issues of a publication in order to have the publication "approved," or to contest the rejection of any particular issue. As I stated above, the presumption of acceptability attaches to each issue, and the burden is on the prison administration to justify the rejection of each issue as it is received. A political, social or philosophical bias on the part of the editors, be it pro-union, pro-racial separation, or anti-behavioral modification cannot justify an outright and total ban on a publication unless the offending issue contains material which actually poses a specific threat, of some immediacy, to the order and security of the institution.^{22/}

^{22/}

It is conceivable that the receipt of several consecutive offending issues could lower the burden for future issues of the same publication, and perhaps even justify a presumption of non-acceptability. Cf. United States Bureau of Prisons, Policy Statement 7300.42B, § 4(c). However, such a rejection would necessarily need to be reviewed on a regular basis, because, as the defendants here point out, it is not uncommon for the editorial viewpoint of a publication to change rapidly. The burden of acquiring issues for such a review must accordingly be upon the prison officials who have the burden of justifying the ban.

The plaintiff further contends that he must, as a matter of due process, be allowed to appear personally before the Library Committee in order to present his arguments in appealing a rejection. His argument is unpersuasive. Since the appellant would not, by definition, have even seen the rejected issue, it is doubtful that he could present any specific argument in support of his position. He must rely on the first amendment, and perhaps the support of the publisher, to present his case.^{23/} The due process clause does not require procedural safeguards as an end in themselves; there must be a demonstration that the safeguard in question will measurably increase the protection afforded the right at issue. Cf. Matthews v. Eldridge, 44 U.S.L.W. 4224, 4229 (U.S. Feb. 24, 1976).

III. Attorney-Client Mail

In his complaint, the plaintiff also seeks an order that the defendants cannot open letters from his attorneys, but must examine them for contraband by means of manual manipulation, fluroscopy, or other similar technique. This claim has not been briefed, and, in light of the holding in Wolff v. McDonnell, 418 U.S. 539, 577 (1974), that in enacting a regulation which required the prisoner to be present when

^{23/}

It is this very inability which compels notice to the publisher as a right of the prisoner, independent of the publisher's own right to notice.

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the mail was opened, prison officials "have done all, and perhaps more, than the Constitution requires," it is clear that the claim must be denied.

IV. The Mail Screen Procedure

During the hearing on the plaintiff's claim that his mail was being unlawfully delayed, it was discovered that for security reasons all non-privileged^{24/} mail addressed to the plaintiff was being opened and read by prison authorities. This procedure is authorized by department regulations.^{25/}

24/

Privileged mail is that sent by attorneys, courts, and governmental officials. Department of Correction, Regulations, § 5, 36 Conn. L.J. No. 33 (Feb. 11, 1975) at 25.

25/

Department of Correction, Regulations, § 11, 36 Conn. L.J. No. 33 (Feb. 11, 1975) at 26 reads:

"(a) Under exceptional circumstances the review of both incoming and outgoing mail may be authorized in writing by the warden. Authorization to review mail may be given on a finding by the warden that there are indications creating a reasonable belief that:

1. Correspondence concerns sending contraband in or out of the institution or contains contraband.
2. Correspondence concerns plans to escape.
3. Correspondence concerns plans for activities in violation of institutional rules.
4. Correspondence concerns plans for criminal activity to be conducted within the institution.
5. Correspondence itself is in violation of institutional rules.
6. Correspondence contains material which would cause emotional trauma to the inmate or

While the plaintiff recognizes that prison officials can open and read prisoners' mail at random, or can open and read all incoming mail, Wolff v. McDonnell, 418 U.S. 539, 576 (1974); Sostre v. McGinnis, 442 F.2d 178, 199 (2d Cir. 1971), cert. denied sub nom. Oswald v. Sostre, 405 U.S. 978 (1972), he seeks to challenge the singling out of an inmate for special supervision under both the due process and equal protection clauses of the fourteenth amendment.

Since the plaintiff has no expectation of privacy, Sostre v. McGinnis, and since the state regulation provides notice of the prison officials' right to open the mail, the plaintiff has failed to state a due process claim. Before any substantial disciplinary action can be taken against a prisoner based on information obtained in a mail screen, he

25/ cont'd

provide some suggestion of inmate emotional state as a potential suicide case.

"(b) The authorization to review mail shall be in writing by the warden and shall state:

1. The name of the inmate whose mail, both incoming and outgoing, may be reviewed.
2. The reason/s upon which the approval is based.
3. The time period for which review is approved. Authorization to review mail may extend for a period not to exceed 60 days, renewable only upon written application to the Commissioner of Correction.

"(c) On the last day of each month, each warden will provide the Commissioner of Correction with a list of names of those inmates whose mail is under review."

will have the normal right to a due process hearing. Sostre, 442 F.2d at 203.

The plaintiff's equal protection claim likewise must fail because the regulation and practices of the prison officials, as proven at the hearing, are tailored to ensure that no screen is undertaken against a particular prisoner unless there is reason to suspect a threat to the security or order of the institution or that the incoming mail could pose a threat to the well-being of the prisoner himself. Cf. Moss v. Hornig, 314 F.2d 89 (2d Cir. 1963).

Consequently, I hold that the defendants in this action invaded no constitutionally protected interest of the plaintiff when they, for a limited period of time, with adequate administrative procedural safeguards, and for a specified purpose, opened and read all of the plaintiff's incoming mail.

V. Violations of Prison Mail Regulations

The plaintiff also alleged, and the defendants admitted, that on several occasions privileged mail was opened out of the plaintiff's presence, in violation of the Department's regulations, and possibly of his constitutional rights. See Wolff v. McDonnell, 418 U.S. 539, 575-76 (1974).

The defendants claim that these occasions were accidents and that accidents are bound to occur in an operation as large as that at Somers prison. While it is perhaps


significant that at least four mistakes happened to a single plaintiff within a relatively short period of time, this inference is not sufficient to overcome the holding of Morgan v. Montanye, 516 F.2d 1367 (2d Cir. 1975).^{26/} That case held that without explicit proof of damages, an occasional violation of attorney-client mail regulations in a prison did not state a claim cognizable under § 1983. The plaintiff's claim must therefore be denied.

VI. Conclusion

In conclusion, the four criteria for the rejection of publications challenged by the plaintiff, and the specific parts of the appeals procedure set out above are declared to be violations of the plaintiff's rights under the first amendment, made applicable to the states by the fourteenth amendment. In all other respects the plaintiff's claims are denied.^{27/}

SO ORDERED.

Dated at Hartford, Connecticut, this 17th day of March, 1976.


M. Joseph Blumenfeld
United States District Judge

^{26/}
But cf. Judge Oakes' dissent from the denial of a petition for rehearing en banc, 521 F.2d at 693.

27/

On March 4, 1976, the plaintiff submitted to this court 61 identical letters, each signed by a different inmate. The plaintiff admits that he typed each of the letters and solicited the signatures of the inmates. Each letter, styled a civil rights complaint, alleges identical violations of the inmate's first amendment rights in that prison officials allowed his mail to be "delayed, read, censored and in some cases lost." These allegations are identical to the issues decided in this opinion. Therefore this court will treat each letter as a motion to intervene pursuant to Rule 24(b), Fed. R. Civ. P. Each motion is denied.

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF CONNECTICUT

3 - - - - - x

4 LOUIS COFONE, :
5 Plaintiff, :
6 vs. : CIVIL H-74-367
7 JOHN R. MANSON, Commissioner :
8 of Corrections, CARL :
9 ROBINSON, Warden, CCI, Somers, :
10 Defendants. :
11 - - - - - x

SEPTEMBER 3, 1975
HARTFORD, CONNECTICUT

12 B E F O R E:
13 HON. M. JOSEPH BLUMENFELD, U.S.D.J.

- 14 (1) EXCERPT FROM TESTIMONY OF
15 LOUIS COFONE
16 (2) TESTIMONY OF HORACE RANDLETT
17 (3) TESTIMONY OF JAMES SINGER
18 (4) TESTIMONY OF CARL ROBINSON

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24 West Hartford, Connecticut
25

A p p e a r a n c e s (Continued):

For the Defendants:

STEPHEN J. O'NEILL, ESQ.
Assistant Attorney General
340 Capitol Avenue
Hartford, Connecticut

EXHIBIT #2

1 H O R A C E R A N D L E T T, called as a witness,
2 being first duly sworn, was examined, and testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MR. O'NEILL:

6 Q Mr. Randlett, you work in the mail room at
7 Somers?

8 A Correct.

9 THE COURT: What's the name?

10 THE WITNESS: Horace Randlett, R-a-n-d-l-
11 e-t-t.

12 THE COURT: And your position at the prison
13 is what?

14 THE WITNESS: Mail Supervisor.

15 THE COURT: Mail Supervisor.

16 All right. Go ahead.

17 BY MR. O'NEILL:

18 Q Showing you Plaintiff's Exhibit 28, which is a
19 letter to Mr. Cofone bearing the return address of Attorney
20 Sikorsky, was that letter opened in the mail room before it
21 went to Mr. Cofone?

22 A Yes, it was.

23 Q How did that happen?

24 A Want a full explanation?

25 Q Yes. Whatever your answer.

1 THE COURT: Well, we don't want a long
2 story. Make it succinct and clear.

3 A First separation in the mail room is a separation
4 of the prisoner's mail from the business mail. The mail
5 that is opened is opened by an electric machine. And as
6 they sort the mail they are supposed to watch for the return
7 addresses and pick up the fact that it's from an attorney.

8 In this case it wasn't noticed that it was from
9 an attorney and it went into the prisoner's file, which is
10 stacked up like this according to size (indicating) and
11 then goes through the electric opening machine.

12 After it goes through the electric opening machine
13 the letters are sorted again alphabetically. And when
14 they went to sort it alphabetically, that is when they
15 caught the fact that one of Mr. Cofone's letters from an
16 attorney was opened.

17 BY MR. O'NEILL:

18 Q Was it read?

19 A No, it was not.

20 Q It's against the rule now to open a letter from
21 an attorney --

22 A Yes.

23 Q -- outside of his presence, isn't that right?

24 A That is correct.

25 Q And for years it's been against the rule to read

1 it, isn't that correct?

2 A Right.

3 Q And still is?

4 A Still is.

5 Q So would you characterize the opening of Attorney
6 Sikorsky's letter as just an accident?

7 A Right.

8 BY THE COURT:

9 Q Now, you have some exceptions, though. You open
10 some of that mail of prisoners who are on the review list,
11 don't you, that otherwise you wouldn't open?

12 A No.

13 Q No?

14 A Any prisoner that's on a review list, if he has
15 attorneys' mail, privileged mail, that's handled just
16 exactly like any other privileged mail.

17 Q Doesn't get opened?

18 A Doesn't get opened.

19 Q Well, what kind of mail does get opened to a
20 prisoner that's on the review list?

21 A Any social mail or advertisement or correspondence
22 that might happen to come in.

23 Q Well, you do open all the prisoners' mail of that
24 character, don't you?

25 A That's right.

1 Q What is the difference, then, if he's on the
2 review list?

3 A On the review list, the prisoner whose mail is on
4 the review list is given to the head of the classification
5 department and they review it.

6 Q It gets looked over by somebody special, is that
7 it?

8 A That is right. The mail room does not --

9 Q But everybody's mail of that character gets opened?

10 A Right.

11 Q And read?

12 A You mean everybody on the review list?

13 Q Yes.

14 A Actually, personally I don't know what the
15 classifications do with it when they get the letters.

16 Q But stuff that's on the review list anyway goes
17 up to somebody special?

18 A That's right.

19 Q To whom?

20 A To the head of the classification department,
21 who was Jerry Smith.

22 Q Who is it now?

23 Q Mr. Reardon, I believe.

24 MR. O'NEILL: Mr. Smith just left to another
25 institution today. I don't know if somebody has

1 been actually formally appointed in his place.

2 THE COURT: All right.

3 A Then they send it back to the mail department.

4 Q (By the Court) And it's distributed like the
5 rest of the mail?

6 A Like the rest of the mail.

7 THE COURT: Okay.

8 BY MR. O'NEILL:

9 Q Now, in the complaint Mr. Cofone complains about
10 the opening of a letter from Governor Grasso. Do you know
11 about that?

12 A Well, I know that all the mail from the governors,
13 and so forth, is on the so-called privileged list.

14 Q Shouldn't be opened?

15 A And shouldn't be opened.

16 Q Was a letter to Mr. Cofone from Governor Grasso
17 opened?

18 A Yes, it was.

19 Q What was that all about?

20 A The Governor's mail had always been coming through
21 with the Governor's signature on the letter, so immediately
22 you saw it, you knew who it was from.

23 Q This is when Thomas Meskill was the Governor?

24 A Right. Then all of a sudden one came that just
25 said "Executive Offices" or something, and the mail room

1 did not know what that meant. It was just a plain letter,
2 as far as we were concerned. It was opened. When it was
3 opened it was discovered that it came from the Governor.

4 Q It wasn't recognized as a letter from the Governor?

5 A Right.

6 Q The complaint also mentions a letter from an
7 Attorney Barbara Milstein that was opened. Do you know
8 about that?

9 A That must have been an error the same as the other
10 one. I don't recall that particular instance.

11 Q But if a letter to Mr. Cofone, or any other
12 prisoner, bearing the return address "Attorney Barbara
13 Milstein" came in, that shouldn't be opened, should it?

14 A That is correct.

15 Q And if it were it would simply be an accident as
16 with Attorney Sikorsky's letter?

17 A Correct.

18 Q At the Warden's request did you maintain a log on
19 mail going to Mr. Cofone which was reviewed because of Mr.
20 Cofone's complaint that there was an inordinate delay in
21 him receiving his mail?

22 A Yes, I did.

23 Q Is this a copy of the log that you made?

24 A Yes, it is.

25 THE COURT: What does it show?

1 MR. O'NEILL: It shows that on practically
2 every occasion Mr. Cofone got his mail the same day
3 it was received at the institution.

4 BY THE COURT:

5 Q Is that right?

6 A That is correct.

7 Q Does he get better service than anybody else out
8 there?

9 A No.

10 Q You mean they all get their mail the same day,
11 generally?

12 A 99 percent of the time.

13 THE COURT: All right.

14 MR. O'NEILL: There are instances where he
15 got it a day later.

16 THE COURT: Okay.

17 MR. O'NEILL: I offer this as Defendant's
18 Exhibit 2.

19 THE COURT: May be admitted. Defendant's
20 Exhibit 2.

21 MR. O'NEILL: I'm not sure it shows the year.

22 BY MR. O'NEILL:

23 Q What period of time does that cover?

24 A May I see it again, please?

25 Q Yes. I don't know if it bears the year.

1 it, isn't that correct?

2 A Right.

3 Q And still is?

4 A Still is.

5 Q So would you characterize the opening of Attorney
6 Sikorsky's letter as just an accident?

7 A Right.

8 BY THE COURT:

9 Q Now, you have some exceptions, though. You open
10 some of that mail of prisoners who are on the review list,
11 don't you, that otherwise you wouldn't open?

12 A No.

13 Q No?

14 A Any prisoner that's on a review list, if he has
15 attorneys' mail, privileged mail, that's handled just
16 exactly like any other privileged mail.

17 Q Doesn't get opened?

18 A Doesn't get opened.

19 Q Well, what kind of mail does get opened to a
20 prisoner that's on the review list?

21 A Any social mail or advertisement or correspondence
22 that might happen to come in.

23 Q Well, you do open all the prisoners' mail of that
24 character, don't you?

25 A That's right.

1 A This was July through October of '74.

2 MR. O'NEILL: I have no other questions,
3 your Honor.

4 CROSS-EXAMINATION

5 BY MS. STONE:

6 Q Mr. Randlett, you have been given any notification
7 by the Department of Corrections as to prisoner organiza-
8 tions or attorney organizations whose mail should not be
9 opened?

10 MR. O'NEILL: I never asked that on Direct
11 Examination.

12 A I don't know exactly what you mean by that.

13 MR. O'NEILL: I never went into that on
14 Direct Examination.

15 MS. STONE: Your Honor, I believe he went
16 into the fact that if the National Prison
17 Project letter had had Attorney Barbara Milstein
18 instead of the National Prison Project, it
19 wouldn't have been opened. And that's what I
20 was asking him, if any criteria had been given to
21 Mr. Randlett that the National Prison Project
22 is, in fact, an attorney organization.

23 THE COURT: Well, you didn't classify it as
24 from a lawyer, is that right?

25 THE WITNESS: Right.

1 THE COURT: Did you have any information to
2 indicate that it was, in fact, the name of a
3 group of lawyers?

4 THE WITNESS: No.

5 THE COURT: All right.

6 BY MS. STONE:

7 Q And have you ever been given information by the
8 Department of Corrections as to different organizations which
9 are attorney organizations?

10 A No.

11 Q Did the mail which you get into the mail room, had
12 that previously been opened by a fluoroscopic device?

13 A No.

14 Q Has a fluoroscopic device ever been used at
15 Somers?

16 A One was used for about a few months prior to last
17 Christmas.

18 Q And it was discontinued because of expense, is
19 that right?

20 A Correct.

21 Q And that was the only reason it was discontinued,
22 is that right?

23 A As far as I know.

24 Q Now, have any precautions been taken as a result
25 of all of these attorneys' mail being opened?

1 A Yes.

2 MR. O'NEILL: What all mail being opened?
3 The only evidence is as to two.

4 THE COURT: Go ahead.

5 A Well, procedure is tightened, everybody's been
6 acquainted with certain ones.

7 From my own personal opinion, there are those
8 lawyers who put on their letters, in bright red letters,
9 "Attorney-Client Correspondence", and if every lawyer did
10 the same thing there would never be any questions. Because
11 when you're doing anywhere between 1200 and 2,000 pieces of
12 mail which you have to do in approximately an hour-and-a-
13 half, when you're sorting like this, it stands up right away.
14 BY MS. STONE:

15 Q Have attorneys who do not put "Attorney-Client
16 Mail" on their letters ever been notified that this would
17 be good procedure for the mail room?

18 A That's not within my jurisdiction.

19 Q If the mail room had more personnel to help
20 you open the pieces of mail would the attorneys' mail be
21 subject, and privileged mail --

22 MR. O'NEILL: We object, your Honor.

23 THE COURT: Sustained.

24 MS. STONE: I have no other questions.

25 THE COURT: Step down, Mr. Randlett.

(witness excused)

EXHIBIT #2B

1 C A R L R O B I N S O N, called as a witness,
2 being first duly sworn, was examined, and testified
3 as follows:

4 THE CLERK: Would you state your full name?

5 THE WITNESS: Carl Robinson.

6 BY THE COURT:

7 Q You are the Warden at Somers?

8 A That's correct, your Honor.

9 Q There's some talk here about Mr. Cofone being on
10 a review list or something.

11 A That's true.

12 Q What is the review list and how do you get onto it?

13 A Okay. Consistent with departmental policy - and
14 the guidelines are clearly spelled out - if at any time
15 we feel that there is one of those guidelines affected ,
16 upon the request to me of the Assistant Warden of Treatment
17 or Custody, they can get to me in writing with the reason
18 they feel that one of the guidelines relative to review of
19 social correspondence should be put into effect.

20 I will review their request, justification, and
21 act accordingly. And this is good for a sixty-day period.

22 Now after that sixty-day period, if they feel
23 the same situation still exists, they can again ask that
24 the man be continued on a review list.

25 Q All right.

1 A At which time if I concur, I will continue it.
2 But I will make the request on to the Commissioner, who
3 will review the recommendation and either approve or
4 disapprove.

5 Q All right. When this is done the subject, the
6 inmate, doesn't know that he's being considered for promotion
7 to a review list?

8 A That's true.

9 Q All right. Now, what are the guidelines that
10 enable him to make that review list? How do you work that
11 out? Give me a for instance, anyway.

12 A Okay. For instance, if there's a strong feeling
13 that there is a commission of a crime within the institution,
14 if there are strong attempts to convey contraband into the
15 institution, if it could affect the man's emotional
16 stability to the extent --

17 Q What could affect the stability?

18 A Pardon, your Honor?

19 Q You're talking if it could affect their emotional
20 stability. What are you talking about?

21 A If correspondence coming in or a situation exists
22 that could affect his stability in terms of some kind of
23 traumatic experience from home, or loved one; something
24 like that.

25

1 DIRECT EXAMINATION

2 BY MR. O'NEILL:

3 Q Why is Mr. Cofone's mail being reviewed?

4 A Okay. Currently Mr. Cofone is under review
5 because we received strong information, which was followed
6 up by an investigation, that there was a planned escape,
7 assault, taking of correctional staff hostage with the
8 escape from the institution. And based on --

9 Q When did this information come to your attention?

10 A Oh, this had to be several months ago. And it
11 came to my attention by the Deputy Warden for Operations.

12 An investigation ensued. And based on some of
13 the information obtained from the investigation I concurred
14 with the recommendation that his name be placed on the
15 review list.

16 Q What is Mr. Cofone in prison for?

17 A Currently he's serving a life sentence for
18 murder, 1st degree.

19 Q What are his previous convictions? Does your
20 file indicate?

21 MS. STONE: Your Honor, I'm going to object.
22 I don't see the relevance to that.

23 THE COURT: Overruled.

24 A Okay. The adult convictions are as follows:
25 January of 1956, operating wrong way on one-way street.

1 That was a \$5 fine.

2 February 11th of 1956, a \$12 fine --

3 Q Give us just the serious ones.

4 A Okay. On April 7th of 1959, aggravated assault,
5 and he was sentenced on an indefinite term to the Cheshire
6 Reformatory.

7 There was an escape from the Reformatory on
8 March of 1960.

9 May of 1961: Rape, 10-to-20 years, Connecticut
10 State Prison. (2) Theft of a Motor Vehicle, three counts,
11 one year. (3) Breaking & Entering with Criminal Intent,
12 one year consecutive with all other counts.

13 On September 20th, '61, Inciting Injury to Persons
14 or Property, 11-to-20 years, Connecticut State Prison,
15 concurrent with other sentences.

16 July, 1970, 1st degree murder, sentenced to death
17 by electrocution on October 7th, 1970. Granted a stay and
18 subsequent to that by the Supreme Court.

19 Q His sentence ^{was} modified to a life term after
20 that?

21 A Correct.

22 BY THE COURT:

23 Q Now this information that you act upon as a
24 basis for placing a prisoner, an inmate, on the review
25 list - not where you get it, but where do you keep it once

1 you get it? Is it a matter of record in your file?

2 A Yes, it is a matter of record. It's in my files,
3 your Honor.

4 Q There's no opportunity for the inmate to be
5 confronted with that information?

6 A Certainly not. Unless at some point it's referred
7 for criminal prosecution.

8 Q All right. Now the effect of being on the review
9 list is what, with respect to his mail for a sixty day
10 period?

11 A Well, this means that we have the option,
12 depending on the nature of the situation, to review all
13 of his incoming social mail, or we can be selective in, say,
14 social correspondence which might be coming from one
15 particular party.

16 Q You scrutinize his incoming social mail?

17 A That's correct.

18 Q By "social mail" you're distinguishing mail from
19 lawyers?

20 A Not lawyers, no sir.

21 Q You're distinguishing mail from public officials?

22 A That's under the privileged category, which
23 certainly isn't subject to review.

24 Q Well, I say you're distinguishing from that.

25 A That's correct, your Honor.

1 Q Well, when you say certainly not mail from
2 lawyers, you mean you read that mail?

3 A No, we do not, your Honor.

4 Q All right. The mail you don't read then is mail
5 from public officials and from lawyers?

6 A That's correct.

7 Q So the other mail is the mail that is reviewed?

8 A Social correspondence, yes.

9 Q Incoming social correspondence?

10 A Yes. Also I might add, by policy, if we felt the
11 situation warranted we could also review outgoing social
12 mail.

13 Q All right. Now this review of the mail, it's a
14 more careful scrutiny of the contents of what's written in
15 those letters than given to other social mail of prisoners
16 who are not on the review list?

17 A That's true, your Honor.

18 Q You read some of the social mail that's received
19 by other prisoners?

20 A No, no. If the person is not on review the mail
21 is just simply opened, checked for contraband and referred
22 in to the man.

23 Q I see. Not supposed to be read, anyway?

24 A It's not if he's not on review, no.

25 Q I see. All right. That's the situation. Is

1 he still on the review list, do you know?

2 A Yes, he is still on the review list, your Honor.

3 Q He was on for sixty days and that was extended
4 for further period of sixty days, is that right?

5 A In fact, I have it on record here the last
6 extension, the last extension approved by the Commissioner
7 was on 8/14/75 for a sixty-day period.

8 Q I see. And that will automatically terminate,
9 unless --

10 A Okay. At the end of this sixty-day period if
11 there is sufficient evidence and it can be presented to me
12 in that fashion, I would then ask for another extension on
13 the part of the Commissioner.

14 Q That is, you'll want evidence to --

15 A That the situation that originated this review
16 still is under suspect.

17 THE COURT: All right.

18 BY MR. O'NEILL:

19 Q Now, Warden, you say you got this information
20 which led to Mr. Cofone being placed on the review list
21 what, three or four months ago? How long ago?

22 A Roughly, I would say approximately three months
23 ago.

24 Q And I take it it was from a prisoner/informer?

25 A In part --

1 THE COURT: Well, why do you take it?
2 I mean we're not asking where he gets is. Do
3 you want to make trouble for somebody?

4 MR. O'NEILL: No, no. We wouldn't identify
5 anybody.

6 BY MR. O'NEILL:

7 Q I'd like to know what, if anything, you could
8 tell us, without jeopardizing anybody's security, as to
9 what the information was and what happened.

10 MS. STONE: Your Honor, I'm going to object
11 on hearsay grounds. They could bring in the
12 witness if they wanted to.

13 THE COURT: I didn't hear what she said, but
14 I'll sustain the objection anyway.

15 MR. O'NEILL: Okay. I have no other
16 questions.

17 THE COURT: Nothing else?

18 CROSS-EXAMINATION

19 BY MS. STONE:

20 Q Mr. Robinson, how long has Mr. Cofone been on
21 this list?

22 A The current period goes back May 27th to the
23 current approval of 8/14/75.

24 Q But prior to May 27th he was on the list, isn't
25 that correct?

1 THE COURT: At some other period.

2 MS. STONE: Yes.

3 Q During other periods of last year he was on the
4 list?

5 A Okay. Originally he went on -- I approved as
6 going on in August 29th of '74.

7 On December 18th of 1974, in writing to Mr.
8 Singer, I asked that -- or I indicated that the termination
9 for review would be taken immediately.

10 Q And the reason that Mr. Cofone has been placed
11 on this review list is because you feel he will escape, is
12 that right?

13 A The current review, in part, has to do with a
14 planned escape from the institution.

15 Q Have you found any weapons in Mr. Cofone's cell?

16 THE COURT: What?

17 Q Any weapons.

18 A No. No, we haven't.

19 Q Have you found any escape plans in his cell?

20 A No, we haven't.

21 Q Has Mr. Cofone made any attempts to escape?

22 A No, he hasn't.

23 Q Has Mr. Cofone been then taken off the list?

24 A Not as of 8/14/75, Mr. Cofone has not.

25 Q In fact, you've asked for an extension, isn't

1 that right?

2 A That's correct. .

3 Q Now, back in 1974, when he was placed on the
4 list, what was the reason for his being placed on the list?

5 A Okay. Based on information that I had to the
6 effect that there were still strong efforts to organize
7 groups within the institution and as a result those types
8 of groups could have been disruptive, which could have
9 affected the safety of not only staff but members of the
10 inmate population.

11 Q Did Mr. Cofone form any groups in the institution?

12 A Well, there were some attempts to conform --

13 Q Were any groups formed as a result of Mr. Cofone --

14 THE COURT: Well, now we're not going to get
15 into the merits of whether or not he was placed
16 upon the -- as being placed on the review list.
17 We're not going to get into the merits of that.

18 They had information and that is what they
19 acted upon. It may raise an issue of whether
20 he has been deprived of any kind of a right and
21 whether it's his constitutional dimension, and
22 then you may raise the issue of whether or not
23 he has received adequate due process in the course
24 of being deprived of whatever it is he has been
25 deprived of.

1 It's interesting, but I don't think it's
2 significant.

3 MS. STONE: Yes, your Honor.

4 I just have a few other questions.

5 THE COURT: All right.

6 BY MS. STONE:

7 Q Did the correspondent whose mail was read ever
8 get notified that his or her mail was read?

9 A By departmental directive it is not necessary
10 that we notify the party that the mail is under review.

11 Q And the plaintiff Cofone has never had a chance
12 to contest his name being on that list?

13 A Yes, he did, in fact, when he confronted me
14 after the first review. And as a matter of ethics I'd
15 like to say I admitted to him that his name was under review.

16 THE COURT: How did he know?

17 THE WITNESS: He asked me about it. He
18 was aware. The policy is published in the
19 inmate newspaper. The men are aware of it - that
20 particular portion.

21 THE COURT: They know that you have this
22 system?

23 THE WITNESS: Yes.

24 BY MS. STONE:

25 Q When Mr. Cofone's name was placed on this list

1 all of his incoming social mail was read, is that correct?

2 A That's correct.

3 Q And when his name was placed on the list for
4 forming unions all of his mail from all outside --

5 THE COURT: He didn't say unions.

6 MS. STONE: For organizations.

7 THE COURT: Groups.

8 Q -- groups, all of his incoming mail was read, is
9 that right?

10 A That's correct.

11 Q And, in fact, he received mail from his sponsor
12 during that time, a Miss Evelyn Vine; is that correct?

13 A That's correct.

14 Q And even her mail was read pursuant to this
15 policy, isn't that correct?

16 A That's correct.

17 Q Even though it was felt that -- Did you feel
18 that she was helping him to organize groups within the
19 institution?

20 A Based on the recommendations submitted to me at
21 the time by the Assistant Warden for Treatment and realizing
22 the seriousness of this situation, I gave approval for all
23 names to be reviewed on the social list.

24 MS. STONE: I have no other questions.

25 (witness excused.)

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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:
LOUIS COFONE
:

vs.

H-74-367 CIVIL
:
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:
:
----- x

JOHN R. MANSON, Commissioner
of Corrections, CARL
ROBINSON, Warden, CCI Somers
:

COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and
foregoing is a true and accurate transcript of
portions from the proceedings held on September 3,
1975, in the United States District Court, for
the District of Connecticut, at Hartford, before
the Honorable M. Joseph Blumenfeld, U.S.D.J.

Official Court Reporter

DATED: AUGUST 9, 1976.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

----- X
:

LOUIS COFONE

vs.

H-74-367 CIVIL

JOHN R. MANSON, Commissioner
of Corrections, CARL

ROBINSON, Warden, CCI Somers

----- X

COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and
foregoing is a true and accurate transcript of
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1975, in the United States District Court, for
the District of Connecticut, at Hartford, before
the Honorable M. Joseph Blumenfeld, U.S.D.J.

Official Court Reporter

DATED: AUGUST 9, 1976.

Jury demand date:

H. JOSEPH BLUMENFELD

Form No. 106 Rev.

4-4-75 placed on trial list

TITLE OF CASE

ATTORNEYS

LOUIS COFONE

vs

JOHN R. MANSON, COMMISSIONER OF CORRECTIONS
 CARL ROTINS, WARDEN OF CONNECTICUT CORRECTIONAL
 INSTITUTION AT SOMERS

For plaintiff:

Martha Stone, Appt.

1000 14th St. N.W.
 1000 14th St. N.W. Washington, D.C. 20006
 West Hartford, Conn. tel. 202-624-82-5

For defendant:

Stephen J. O'Neill

340 Capitol Ave
 Hartford, Conn.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
5 mailed	Clerk				
6 mailed	Marshal				
is of Action: Action brought	Docket fee				
uant to Title 42 U.S.C					
33 seeks injunctive relief	Witness fees				
ges obstruction of his					
tion arose at: 1. mail.	Depositions				
23 ALLEGATION					

DATE	PROCEEDINGS	Date Order Judgment Not
1974		
1-18	1. Complaint filed. Permission to proceed in forma pauperis granted. Blumenfeld, J. m 11/19. Letter appointing Martha Stone to represent Mr. Cofone Blumenfeld, J. m 11/19/74. Copy of file mailed to Atty Stone.	
12-20	2. Complaint filed. Summons issued and together with same and attested copies of permission to proceed in forma pauperis handed to Marshal for service.	
12-30	3. Marshal's return showing service.	
1-10-75	4. Appearance of Stephen J. O'Neill entered for the defendants.	
1-13	5. Motion for enlargement of time to answer is extended to 1/23/75. Blumenfeld, J m 1-13-75. Copies mailed.	
4-2	6. Answer and Special Defense.	
4-4	Placed on trial list	
6/10	Hearing on Merits--OFF. Blumenfeld, J.	
8-21	7. Application for writ of habeas corpus ad testificandum and ORDER, filed. Blumenfeld, J. m 8-21-75. Two attested copies handed to Marshal for service.	
9-3	HEARING on MERITS. Plaintiff sworn and testified. One Pltf. witness sworn and testified, Exhibits 1, 2A-E, 2F-K, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 25, 26, 27, 28, 29 & 30. filed. by Pltf. Defendants, witnesses sworn and testified, Def. Exhibits 1, 2, 3, 4, 5, 6, & 7. filed. Plaintiffs brief filed. Supplemental Brief to be filed in one week. Stipulation of Facts filed by Pltf. Atty O'Neill to respond in 2 weeks.	
9-16	8. Marshal's return showing writ executed.	
9-23	9 Supplemental Brief in support of Pltf's request for declaratory & injunctive relief.	
9-29	10. Transcript of Hearing on 9/3/75. Collard, Rd.	
11-6	11. Defendants Brief and Joint Affidavits filed.	
11/12	Court Reporter's Notes of Proceedings held on September 3, 1975. filed in Hartford. (Collard, R.)	
11-26	12. Reply Brief in Support of Plaintiffs Request for Declaratory and Injunctive Relief.	
12-1	13. Affidavit of Raymond M. Lopes.	
1976		
2-25	14. Motion to Amend Complaint, "Motion granted- amendment may be filed by March 8, 1976. Blumenfeld, J. m 2-25. Copies mailed to counsel.	
3-17	15 Amended Complaint filed.	
3/17	16. MEMORANDUM OF DECISION. filed and entered. (Blumenfeld, J.) M-3/17/76. The four criteria for rejection of publications challenged by pltf., and specific parts of appeals procedure are declared to be violations of pltf's. rights under 1st amendment, made applicable to states by 14th amendment. In all other respects, pltf.'s claims are denied. Copies to counsel.	
4-19	17 Motion to withdraw as counsel for pltf. "motion granted" Blumenfeld, J. m 4-19-76. Copies to counsel and Mr. Cofone.	
4-7	18 Motion to Proceed in Forma Pauperis on appeal, "Granted." Blumenfeld, J. m 4-7-76. Copies mailed to counsel.	
"	19. Notice of Appeal filed. Copies to U.S. Court of Appeals and New Haven with copies of docket entries. Civil Management Plan to Atty Stone. Copies of notice to Atty O'Neill and Mr. cofone.	
5-10	20 Motion for Funds for Transcript of Appeal. "Denied, There being no statutory provision or other authority which permits this court to incur the expenses obtaining a transcript in \$1983 cases. Blumenfeld J. m 5-11-76. Copies to counsel.	
5-14	JUDGMENT entered, Copies to Mr. Cofone and Counsel of Record m 5-15-76 Blumenfeld, J.	
5-13	Record on Appeal mailed to U.S. Court of Appeal with copies of Index.	
8-9	22. Transcript of proceedings held on Sept. 3, 1975. Collard, R.	

BEST COPY AVAILABLE